

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

THOMAS C. McINTOSH AND PAMELA McINTOSH

PLAINTIFFS

V.

CIVIL ACTION NO. 1:06cv1080-LTS-RHW

STATE FARM FIRE & CASUALTY COMPANY AND  
FORENSIC ANALYSIS & ENGINEERING CORP.

DEFENDANTS

**ORDER**

This Court entered an [28] Order for Mediation on April 13, 2007. The order is clear as to attendance and participation, and expressly states that “[a] party’s and counsel’s failure to attend and participate in this mediation, without good cause, shall result in the imposition of appropriate sanctions.”

Unfortunately, neither Plaintiffs nor any of their counsel appeared at the mediation scheduled on May 29. The mediator and counsel for both Defendants were present. Upon further inquiry, it has been learned that the original letter setting the mediation was sent by the Program Administrator on May 4, and that reminder calls were made on May 23. The Court has received information that other counsel for Plaintiffs may not have been aware of the mediation. The Court is certain that the failure to appear by any of Plaintiffs’ counsel is probably attributable to oversight rather than intent.

However, the standard is good cause, and an internal communication issue among Plaintiffs’ counsel does not constitute good cause. It also does not change the fact that expenses were incurred by the Program Administrator arranging the mediation, and by the mediator and defense counsel who were present for it. The Court does not expect this conduct to be repeated, and looks forward to all parties and their counsel participating in the mediation in a serious and good faith manner consistent with its [28] Order.

Accordingly, **IT IS ORDERED:**

Attorney Derek A. Wyatt (Wyatt) shall send a check in the amount of \$200.00 payable to the American Arbitration Association at the following address:

American Arbitration Association  
Central Case Management Center  
13455 Noel Rd., Suite 1750  
Dallas, TX 75240-6620  
ATTN: Lesley Barton

Wyatt shall send a check in the amount of \$400.00 payable to Richard W. McKenzie at the following address:

Richard W. McKenzie, Esq.  
P. O. Box 1403  
Hattiesburg, MS 39403

Wyatt shall send a check in the amount of 400.00 payable to Harry Benjamin Mullen at the following address:

Harry Benjamin Mullen, Esq.  
Bryan, Nelson, Schroeder, Castigliola & Banahan  
P. O. Drawer 1529  
Pascagoula, MS 39568-1529

Wyatt shall send a check in the amount of \$500.00 payable to Larry G. Canada at the following address:

Larry G. Canada, Esq.  
Galloway, Johnson, Tompkins, Burr & Smith  
701 Poydras Street, Suite 4040  
New Orleans, LA 70139

(It should be noted that the additional travel time accounts for the different amounts for defense counsel, although in neither case are they fully compensated for the time spent for attendance).

Wyatt shall send these checks no later than June 4, 2007, and shall provide written confirmation to the Court of payment. The payees shall also provide written confirmation to the Court of the receipt of payment.

The mediation in this cause of action is **NOT** continued, but shall be rescheduled during the current round of the Court's mediation program.

Wyatt shall further advise the American Arbitration Association immediately which one of the other of Plaintiffs' eight listed counsel should receive notification with respect to the rescheduling of the mediation.

**SO ORDERED** this the 30<sup>th</sup> day of May, 2007.

s/ L. T. Senter  
L. T. SENTER, JR.  
SENIOR JUDGE